

## PUBLIC CONTRACTS REVIEW BOARD

### Case No. 318

#### **Birgu SS05/11**

#### **Services Tender for Street Sweeping and Cleaning at Birgu**

This call for tenders was published in the Government Gazette on the 21<sup>st</sup> January 2011. The closing date for this call with an estimated budget of between € 35,000 and € 40,000 was the 14<sup>th</sup> February 2011.

Four (4) tenderers submitted their offers.

Dimbros Ltd filed an objection on the 3<sup>rd</sup> March 2011 against the decision the Birgu Local Council to discard its offer of €23,850 and to award the tender to EuroClean Waste Services Ltd for the price of €30,000 without furnishing reason/s to justify the decision.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Wednesday, 31<sup>st</sup> August 2011 to discuss this objection.

Present for the hearing were:

#### **Dimbros Ltd**

Dr Sharon Mizzi	Legal Representative
Mr Melchior Dimech	Representative
Ms Josephine Dimech	Representative

#### **Birgu Local Council**

Mr John Boxall	Mayor
Ms Christine Bonello	Executive Secretary

*EuroClean Services Ltd*

*No representative attended*

After the Chairman, Public Contracts Review Board's brief introduction, the appellant company was invited to explain the motives of its objection.

Dr Sharon Mizzi, legal representative of Dimbros Ltd, the appellant company, made the following submissions:

- a. whilst, by way of a letter dated 1<sup>st</sup> March 2011, the Birgu Local Council informed her client that the firm's bid in connection with this call for tenders had not been successful, yet, the local council did not furnish her client with a reason or reasons to substantiate its decision;
- b. her client's offer amounted to €23,850 which was the cheapest one whereas that of the recommended tenderer amounted to €30,000, which represented a substantial saving and, as a consequence, her client's call for an explanation as to why his company's offer had been discarded was all the more justified;
- c. the Council's only reason that one could trace was that recorded in the minutes of council meeting held on the 25<sup>th</sup> February 2011, which read as follows:

*“Wara diskussjoni, is-Sur John Boxall, Sindku, issuggerixxa sabiex il-Kunsill jilqa’ l-offerta tal-kumpannija EuroClean Ltd li ghalkemm ma kienetx l-irhas offerta, din il-kumpannija ilha ghal dawn l-ahhar sitt snin toffri sevizz tajjeb u mill-aqwa lill-Kunsill. Barra minn hekk, kemm ilha din il-kumpannija taghmel dan it-tip ta’ xoghol fil-Birgu kienu ftit l-ilmenti li l-Kunsill ircieva. Apparti dan, l-offerta offruta, din id-darba hija irhas minn dik mitfuha s-sena l-ohra mill-istess kuntrattur. Il-Kunsilliera Miriam Grech issekonda u dwar dan kien hemm qbil unanimu.”*

- d. if the Council intended all along to award the contract to the current contractor irrespective of what other tenderers would offer then one had to question for what purpose did the Council issue the call for tenders since, with that frame of mind, the Council might as well have given out the contract through the issue of a direct order.

Mr John Boxall, Mayor of the Birgu Local Council, submitted the following remarks:-

- i. the guidelines for local councils obliged the Council to issue a call for tenders for the provision of street sweeping and cleaning services and not a direct order;
- ii. in spite of the fact that for this service the guidelines allowed local councils to award a one-year contract renewable annually for a three year period, his Council preferred to issue a call for tenders on an annual basis so that the contractor would carry out his/her work diligently conscious that if one did not perform well one would not be awarded the contract for the next year otherwise there was the likelihood that the contractor would neglect one's duties during the second or third year of the contract period;

- iii. since its establishment the Council has had about seven different contractors on this type of service;
- iv. it was correct, as evidenced from the Council minutes, that the reason for awarding the tender to EuroClean Ltd was that, over the previous six years, it had been offering a very good service;
- v. the Council was unanimous in its decision and that it had acted in that manner in good faith.

On her part, Ms Christine Bonello, Executive Secretary of the Birgu Local Council, remarked that the Council had no adverse reports in hand with regard to the services that the appellant, Dimbros Ltd, carried out on behalf of other entities.

The Chairman Public Contracts Review Board intervened and, albeit he did not shed any doubt on the good intentions of the Council in acting the way it did, yet, he did draw the attention of the Council's representatives that:-

- a. a call for tenders was issued for the purpose of inviting tenderers to bid for a contract on the basis of quality of service/work and price and that unless one tested what the market had to offer one could not feel comfortable that one was getting the desired service at a competitive price;
- b. unless the contracting authority had any proof that the cheapest bidder would not be in a position to deliver the service to the level requested then the contracting authority would not be justified to discard anyone's bid;
- c. it was not acceptable for any Council to issue a call for tenders when the contracting authority already knew to whom it would award a contract as that would render the issue of the call for tenders a 'fake'; and
- d. given that public funds are involved, one had to ensure that a public entity always obtained the desired service at the best price.

Mr Boxall noted the remarks made by the Chairman Public Contracts Review Board and undertook that, in future, the Council would adhere to them.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant's company, in terms of the reasoned letter of objection of the 3<sup>rd</sup> March 2011, and through the verbal submissions made during the hearing held on the 31<sup>st</sup> August 2011, had objected against the decision taken by the Birgu Local Council to discard its offer of €23,850 and to award the tender to EuroClean Waste Services Ltd for the price of €30,000 without furnishing reason/s to justify the decision;
- having noted the appellant firm's representatives claims and observations regarding the fact that (a) whilst, by way of a letter dated 1<sup>st</sup> March 2011, the Birgu Local

Council informed the appellant company that the firm's bid in connection with this call for tenders had not been successful, yet, the local council did not furnish the company with a reason or reasons to substantiate its decision, (b) whilst the appellant company's offer amounted to €23,850, which was the cheapest one, that of the recommended tenderer amounted to €30,000, which represented a substantial saving and, as a consequence, the appellant's call for an explanation as to why his company's offer had been discarded was all the more justified, (c) the Council's reason, as given in a public meeting held on the 25<sup>th</sup> February 2011, raised quite a few doubts as to the erroneous methodology adopted by the Council in awarding this tender and (d) if the Council intended all along to award the contract to the current contractor irrespective of what other tenderers would offer then one had to question for what purpose did the Council issue the call for tenders since, with that frame of mind, the Council might as well have given out the contract through the issue of a direct order;

- having considered the contracting authority's representative's submissions, namely that (a) the guidelines for local councils obliged the Council to issue a call for tenders for the provision of street sweeping and cleaning services and not a direct order, (b) it was correct, as evidenced from the Council minutes, that the reason for awarding the tender to EuroClean Ltd was that, over the previous six years, it had been offering a very good service and (c) the Council had no adverse reports in hand with regard to the services that the appellant, Dimbros Ltd, carried out on behalf of other entities;

reached the following conclusions:

1. The Public Contracts Review Board feels that, once the contracting authority did not have any proof that the cheapest bidder would not have been in a position to deliver the service to the level requested, then the contracting authority was obliged not to discard the appellant company's bid and recommend the adjudication of the said tender to the existing contractor, simply for the reason that, over the last six years, the latter had been offering a very good service.
2. This Board feels that, albeit it has no reason to believe that any action on the part of the local council was made in bad faith, yet, it is evident that the contracting authority, somehow, vitiated both the scope, as well as the spirit, of procurement procedures where, *inter alia*, it is indeed imperative for full transparency to be felt by and equal opportunity to be given to, all participating tenderers. Needless to say that having, *a priori*, a preconceived idea during the evaluation stage does not really lead any evaluation committee to a fair and equitable evaluation of bids submitted.

In view of the above this Board finds in favour of the appellant company and, whilst recommending that the bid submitted by the same appellant should be reintegrated in the evaluation process for further evaluation, it also recommends that the deposit paid by the latter should be reimbursed.

Alfred R Triganza  
Chairman

Carmel J Esposito  
Member

Joseph Croker  
Member

30 September 2011